IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3670 OF 2005

IN

SUIT NO.3188 OF 2005

M/s.Arvindkumar Maganlal & Co. ...Plaintiff.

vs.

M/s.Jinesh & Co. & others. ...Defendants.

Ms.Gada i/b. Harakchand & Co., for Plaintiff.

Mr.N.V.Kode, for M/s.Rikita Enterprises Pvt.Ltd.

CORAM: D.K.DESHMUKH,J.

DATED: 25th June,2007.

P.C.:-

1. This is a notice of motion taken out by the plaintiff for attachment before judgment under Order 38 Rule 5 of Civil Procedure Code. It is an admitted position that by order dated 29.8.2006 passed in Summons for judgment no.1 of

2006, by consent of parties, conditional leave to defend was granted to the defendants. The defendants did not deposit the amount. As a consequence of failure of the defendants to deposit the amount, the suit has been decreed.

2. Now admittedly, the suit is not pending. A notice of motion under Order 38 Rule 5 of CPC can be taken out for attachment of the property of the defendants before judgment. Now when the suit is not pending, there is no question of granting any order of attachment before judgment. The notice of motion is therefore, disposed of.